

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Giansante	Team: Squad #8	CCRB Case #: 201704064	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 05/12/2017 12:30 AM	Location of Incident: [REDACTED]	Precinct: 52	18 Mo. SOL 11/12/2018	EO SOL 11/12/2018	
Date/Time CV Reported Fri, 05/12/2017 2:15 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 05/23/2017 12:45 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. An officer			052 PCT
2. POM Brandon Gembecki	01517	949015	052 PCT
3. POM Adam Landesberg	15894	949195	052 PCT
4. POM Juan Gomez	27475	953916	052 PCT
5. Officers			052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brandon Gembecki	Abuse: Police Officer Brandon Gembecki stopped the vehicle in which § 87(2)(b) was an occupant.	[REDACTED]
B.POM Juan Gomez	Abuse: Police Officer Juan Gomez stopped the vehicle in which § 87(2)(b) was an occupant.	[REDACTED]
C.POM Adam Landesberg	Abuse: Police Officer Adam Landesberg stopped the vehicle in which § 87(2)(b) was an occupant.	[REDACTED]
D.POM Brandon Gembecki	Abuse: Police Officer Brandon Gembecki frisked § 87(2)(b)	[REDACTED]
E.POM Brandon Gembecki	Force: Police Officer Brandon Gembecki used physical force against § 87(2)(b)	[REDACTED]
F.POM Juan Gomez	Force: Police Officer Juan Gomez used physical force against § 87(2)(b)	[REDACTED]
G. An officer	Force: An officer struck § 87(2)(b) with a radio.	[REDACTED]
H. Officers	Force: Officers used physical force against § 87(2)(b)	[REDACTED]
I.POM Brandon Gembecki	Force: Police Officer Brandon Gembecki used a chokehold against § 87(2)(b)	[REDACTED]
J.POM Brandon Gembecki	Force: Police Officer Brandon Gembecki restricted the breathing of § 87(2)(b)	[REDACTED]
K. An officer	Force: An officer restricted the breathing of § 87(2)(b)	[REDACTED]

Case Summary

On May 12, 2017, Lt. Kevin Maloney of the 52nd Precinct filed the following complaint by phone with IAB on behalf of § 87(2)(b). The CCRB received the complaint on May 23, 2017.

On May 12, 2017, at approximately 12:30 a.m., in the vicinity of 2700 Grand Concourse in the Bronx, Police Officer Brandon Gembecki, Police Officer Juan Gomez, and Police Officer Adam Landesberg, who were all assigned to the 52nd Precinct at the time, stopped a vehicle driven by § 87(2)(b) (**Allegations A-C: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) was a passenger in the vehicle and witnessed the incident. PO Gembecki instructed § 87(2)(b) to exit the vehicle and frisked him (**Allegation D: Abuse of Authority, § 87(2)(g)**). During or after the frisk, PO Gembecki allegedly forcibly took § 87(2)(b) to the ground (**Allegation E: Force, § 87(2)(g)**). § 87(2)(b) resisted officers' attempts to handcuff him on the ground, and he bit PO Gembecki on the bicep. PO Gembecki punched § 87(2)(b) about the face and head an indeterminate number of times (**also Allegation E**). PO Gomez also punched § 87(2)(b) (**Allegation F: Force, § 87(2)(g)**). During the physical struggle to handcuff § 87(2)(b) an officer allegedly struck him on the head with a radio (**Allegation G: Force, § 87(2)(g)**). Officers also allegedly punched and kicked him multiple times in the back and chest (**Allegation H: Force, § 87(2)(g)**). PO Gembecki also allegedly wrapped his arm around § 87(2)(b) throat and restricted his breathing (**Allegations I-J: Force, § 87(2)(g)**). Once § 87(2)(b) was handcuffed and lying on the ground, an officer allegedly stepped on his neck, which restricted his breathing (**Allegation K: Force, § 87(2)(g)**).

§ 87(2)(b) was arrested for § 87(2)(b) (BR01). § 87(2)(b) was arrested for § 87(2)(b) (BR01).

Surveillance video footage was obtained in this case (BR03; BR04).

Findings and Recommendations

- **Allegation (A) Abuse of Authority: Police Officer Brandon Gembecki stopped the vehicle in which § 87(2)(b) was an occupant.**
Allegation (B) Abuse of Authority: Police Officer Juan Gomez stopped the vehicle in which § 87(2)(b) was an occupant.
Allegation (C) Abuse of Authority: Police Officer Adam Landesberg stopped the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) provided two statements about the incident to IAB officers while he was still in the hospital (BR05). He provided a phone statement and an in-person statement to the CCRB (BR07; BR08). § 87(2)(b) was driving his girlfriend's vehicle at the time of the incident. § 87(2)(b) who is a barber, had just cut § 87(2)(b) hair at § 87(2)(b), and § 87(2)(b) was driving him home. Throughout his statements, § 87(2)(b) maintained that the vehicle's headlights were on and that he did not commit any traffic infractions before being pulled over. In his statements to the CCRB, § 87(2)(b) recounted that he was stopped at a red light at the intersection of East Kingsbridge Road and the Grand Concourse facing eastbound, and that he saw the officers' vehicle pass him while going west on East Kingsbridge Road before making a U-turn to pull up directly behind his vehicle. The officers followed him in turning left onto the Grand Concourse before stopping him. § 87(2)(b) also insisted that the vehicle's

lights were functioning properly (BR09). § 87(2)(b) confirmed that § 87(2)(b) was driving him home after a haircut.

During his first IAB interview, § 87(2)(b) denied that he consumed any alcohol or drugs prior to the incident, but later admitted that he smoked marijuana the previous morning. He also admitted that PO Gembecki found a single Percocet pill on his person. During his second IAB interview, § 87(2)(b) first denied that there were any pills in his vehicle, then admitted that PO Gembecki found Percocet on his person, and then claimed he did not have any pills on his person and said that he did not use drugs. § 87(2)(b) finally admitted that he had “like four” Percocet pills on him. He also admitted that he smoked marijuana about four hours before the incident. He claimed not to have taken any Percocet more recently than two or three days before the incident.

In his phone statement, § 87(2)(b) mentioned that officers found pills “around” him, but denied that he had any pills on his person and said he did not know where the officers found them. He later admitted that he had three or four pills in his pants pocket, but denied having as many as the officers claimed to have found. In his CCRB interview, § 87(2)(b) claimed to have had four Percocet pills wrapped in a napkin in his pants pocket. He now admitted that he regularly takes Percocet because of “family problems,” and that he had taken two pills in the afternoon before the incident. He denied that he was “intoxicated” or “under the influence” at the time of the incident.

The Patient Care Report from the ambulance service which transported § 87(2)(b) from the 52nd Precinct stationhouse to the hospital states that § 87(2)(b) was “intoxicated” when the EMTs examined him at the stationhouse (BR26). It does not contain any further information as to how the EMTs reached that conclusion or whether § 87(2)(b) was under the influence drugs as opposed to alcohol. § 87(2)(b) hospital records indicate that he admitted to medical personnel that he purchased and used Percocet in the day before the incident, but the records do not contain any statements regarding whether hospital staff considered him to be intoxicated when he arrived (BR25). The records note that § 87(2)(b) was a “poor historian,” but the exact meaning and basis for that designation are not clear. A urine toxicology test performed approximately 15 hours after the start of the incident was positive for cannabinoids and negative for opiates, though the records state that the opiate test is “relatively insensitive” to synthetic opioids like Percocet.

PO Gembecki recounted that he was actually driving southbound on the Grand Concourse when he saw § 87(2)(b) vehicle turning from East Kingsbridge Road into the northbound lanes of the Grand Concourse (BR10). The headlights on § 87(2)(b) vehicle were off. The smaller lights located on the front of the vehicle below the headlights were on. PO Gembecki referred to these as “fog lights.” PO Gembecki decided to stop § 87(2)(b) to warn him about driving without headlights at night and to make sure that § 87(2)(b) was “safe to drive.” PO Gembecki made a U-turn to get behind § 87(2)(b) vehicle before stopping him.

When PO Gembecki later approached the vehicle and spoke to § 87(2)(b) § 87(2)(b) insisted that his headlights were on and kept trying to reach for different switches in the vehicle in an apparent effort to turn the headlights on. PO Gembecki suspected that § 87(2)(b) was intoxicated, because he observed that § 87(2)(b) eyes were glassy and he had dilated pupils, and because § 87(2)(b) kept reaching around the vehicle and speaking incoherently. PO Gembecki further suspected that § 87(2)(b) was intoxicated because he initially refused to exit the vehicle upon request, and because § 87(2)(b) later bit him. PO Gembecki had multiple conversations with § 87(2)(b) at the hospital after the incident, and § 87(2)(b) still did not seem entirely coherent or lucid; he seemed loopy or a little out of it.

PO Gomez also recounted that the vehicle's headlights were off, and he did not think that any lights on the front of the vehicle were on (BR11). He could not recall where the officers' vehicle was located in relation to § 87(2)(b) vehicle at the time of the initial observation. He discussed the observation with his partners, and he thought they were going to issue a summons for the infraction. PO Gomez also spoke to § 87(2)(b) later at the hospital, and it seemed to him that § 87(2)(b) was under the influence of some type of drug, as his pupils were visibly dilated.

PO Landesberg recalled that the officers stopped § 87(2)(b) vehicle for driving without headlights, but he was unsure if he personally observed the infraction (BR12). He could not recall how the officers' vehicle was positioned in relation to § 87(2)(b) vehicle at the time of the initial observation. He also recalled discussing the observation with his partners before they decided to stop the vehicle, and said that they stopped the vehicle largely due to safety concerns. PO Landesberg did not visit § 87(2)(b) in the hospital, and he never indicated that he had reason to believe § 87(2)(b) was intoxicated.

The arrest reports for § 87(2)(b) and § 87(2)(b) and the criminal court complaint for § 87(2)(b) have no charges related to the traffic infraction and make no mention of § 87(2)(b) vehicle's headlights (BR01; BR02; BR13). PO Gembecki was the arresting officer, but as he explained during his CCRB interview, he went to the hospital for his injuries after the incident and did not actually complete the arrest paperwork. He identified PO Landesberg as the officer who completed the paperwork, and said he would have charged § 87(2)(b) with the headlight infraction or issued him a summons for it had he personally completed the paperwork. PO Landesberg could not recall if he was involved in preparing any of the arrest paperwork, but denied that he decided which charges to plead or drafted the narrative portion. He did not know why the headlight infraction was omitted, but he speculated that it could have been due to human error. The arrest reports state that they were "entered by" PO Christopher Hansen of the 52nd Precinct, indicating that an unrelated officer was involved in some manner in inputting the forms into the computer system.

The surveillance video footage obtained by the investigation is too indistinct to determine if § 87(2)(b) vehicle's headlights are illuminated prior the stop (BR03; BR04). In addition, once § 87(2)(b) vehicle and the police vehicle come to a stop in the footage, a large circle of "glare" in the center of the camera's field of view obscures the entire area in which the incident takes place. The circle of glare remains throughout the majority of the incident, and further obstructs the viewer's ability to determine if § 87(2)(b) headlights were on at the time he was stopped. Snag It #1, embedded below, shows the moment that § 87(2)(b) vehicle came to a stop (BR24):



2018-01-11_13-48-32.mp4

§ 87(2)(g)

[REDACTED]

- **Allegation (D) Abuse of Authority: Police Officer Brandon Gembecki frisked** § 87(2)(b)

§ 87(2)(b)

It is undisputed that PO Gembecki frisked § 87(2)(b)

In his first IAB statement, § 87(2)(b) claimed that PO Gembecki searched him after he exited the vehicle and found a single Percocet pill. In his second IAB interview, § 87(2)(b) reiterated his claim that PO Gembecki searched his pockets after he exited the vehicle and found narcotics on him. In his phone statement, § 87(2)(b) recounted that PO Gembecki felt the outside of his body and entered all of his pockets, but he claimed that PO Gembecki did not remove anything from his pockets. PO Gembecki then instructed § 87(2)(b) to turn around and face his own driver's door. PO Gembecki instructed § 87(2)(b) to spread his legs and grabbed his genitals through his pants.

In his CCRB interview, § 87(2)(b) specifically denied that he or § 87(2)(b) made any physical movements as he was pulling over. He lowered all the vehicle's windows and turned off the engine, a procedure he follows whenever he gets pulled over because he knows "how police is" and that they get nervous if "they see you move." He specifically denied that he put anything into his pockets, reached into his pants through his waistband, or tried to put anything into his pants while inside the vehicle.

After § 87(2)(b) exited the vehicle, PO Gembecki stood facing him and patted the front of his entire body. PO Gembecki instructed § 87(2)(b) to turn around, and then patted the back side of his entire body. § 87(2)(b) denied that PO Gembecki entered his pockets during the frisk. PO Gembecki then instructed § 87(2)(b) to spread his legs, and he reached through § 87(2)(b) legs from behind and grabbed his crotch. § 87(2)(b) felt uncomfortable, asked PO Gembecki what he was doing, and took a "half step" to the right. PO Gembecki then forcibly took him to the ground.

§ 87(2)(b) recounted seeing PO Gembecki and another officer searching § 87(2)(b) and that § 87(2)(b) got angry when the officers touched his butt and genitals. He claimed that an officer was already searching inside the vehicle at this time, and that the officers handcuffed § 87(2)(b) while searching him. § 87(2)(b) was standing on the passenger side of the vehicle near the rear at the time.

PO Gembecki recounted that he could see into § 87(2)(b) vehicle once it was stopped and even before he approached it on foot, as the police vehicle's lights were quite bright. He saw that § 87(2)(b) was moving a lot. He could not see exactly the manner in which § 87(2)(b) was moving, except that he appeared to be moving side to side and bending over.

As PO Gembecki approached the driver's window on foot, he shined his flashlight at the vehicle and saw § 87(2)(b) place one of his hands behind his back. § 87(2)(b) then shoved his hand downward, as though he was pushing something farther down his pants. PO Gembecki could not recall which hand § 87(2)(b) used to make this movement. PO Gembecki could only see § 87(2)(b) arm at this point, and could not actually see § 87(2)(b) pants. PO Gembecki suspected that § 87(2)(b) was concealing something, and he thought that § 87(2)(b) might have put a weapon or contraband into his pants. PO Gembecki was primarily concerned with the possibility of a weapon, as it could pose a danger to him. § 87(2)(b) stopped moving in this manner when PO Gembecki arrived at the driver's window.

PO Gembecki could see both of § 87(2)(b) hands at that point, so he concluded that § 87(2)(b) did not have direct access to a weapon if he had concealed one. He explained the reason for the stop, at which point § 87(2)(b) began searching for a switch related to the headlights as detailed in the previous section discussing **Allegations A-C**. PO Gembecki eventually asked § 87(2)(b) to exit the vehicle, and § 87(2)(b) verbally refused before eventually complying. § 87(2)(b) refusal led PO Gembecki to further suspect that he was concealing something.

While he spoke to § 87(2)(b) at the driver's window, PO Gembecki could not hear if PO Gomez was speaking to § 87(2)(b).

Once § 87(2)(b) exited and was standing facing the vehicle, PO Gembecki attempted to frisk the rear of his waistband, where he suspected § 87(2)(b) had attempted to conceal something. PO Gembecki did not observe a bulge in the area prior to attempting to frisk the area. When PO Gembecki reached out to frisk § 87(2)(b), § 87(2)(b) pulled away from him and moved closer to the vehicle. PO Gembecki told him, "Don't resist. Just relax. I just want to make sure there's no weapons on you." PO Gembecki frisked the area and felt an almost ball-shaped object inside § 87(2)(b) pants. PO Gembecki felt fairly certain that the object was not a weapon, but it might have been contraband. PO Gembecki denied that he conducted a thorough frisk of the entirety of § 87(2)(b) body.

Almost immediately after PO Gembecki felt the object inside § 87(2)(b) pants, § 87(2)(b) pushed backwards off the vehicle, sending both men to the ground and sparking a physical struggle. As noted in the Criminal Court Complaint, PO Gembecki later found a clear plastic bag containing 82 opioid pills in the rear waistband of § 87(2)(b) pants. PO Gembecki knew that § 87(2)(b) was arrested because a pill was found near his feet on the passenger side, but he could not recall who recovered that pill, if he saw it on scene or at the stationhouse, or whether it was of the same type as the pills found on § 87(2)(b).

PO Gomez recounted seeing both § 87(2)(b) and § 87(2)(b) moving around in the vehicle as they were pulling over. They both moved left and right, and both reached toward the center console and glove compartment. He did not see either of them reach behind their backs. The men continued to move in this fashion as PO Gomez approached the passenger window on foot. By the time PO Gomez reached the front passenger window, the men had stopped moving. PO Gomez saw a single pill on the floor of the vehicle near § 87(2)(b)'s feet. PO Gomez could not recall how the pill looked, but he knew that he must have been able to immediately identify it as contraband because he asked § 87(2)(b) to exit the vehicle and placed him under arrest. PO Gomez could not tell what exactly was happening at this point between PO Gembecki and § 87(2)(b) and did not recount seeing PO Gembecki frisking § 87(2)(b).

PO Landesberg did not recall seeing § 87(2)(b) or § 87(2)(b) making any movements as their vehicle pulled over. PO Landesberg recounted approaching the vehicle on the passenger side, and denied seeing either occupant make any movements as he approached. He described watching from the passenger side as PO Gembecki removed § 87(2)(b) from the vehicle and patted down his pockets and waistband. PO Gembecki said, "He has something," and § 87(2)(b) pushed back off the vehicle into PO Gembecki. At this point, the physical struggle began.

PO Landesberg § 87(2)(g) claimed that PO Gomez approached the struggle to aid PO Gembecki, while he remained on the passenger side. He saw PO Gembecki, PO Gomez, and § 87(2)(b) go to the ground and could not tell exactly what was going on, so he took § 87(2)(b) out of the vehicle and explained that he was going to temporarily handcuff him so he could assist his partners. PO Landesberg later observed

some form of contraband on the floor inside the vehicle, though he could not recall if it was pills or possibly heroin. PO Landesberg then explained to § 87(2)(b) that he would have to be arrested.

§ 87(2)(g)

- **Allegation (E) Force: Police Officer Brandon Gembecki used physical force against**

§ 87(2)(b)

- **Allegation (F) Force: Police Officer Juan Gomez used physical force against**

§ 87(2)(b)

It is undisputed that PO Gembecki and PO Gomez both punched § 87(2)(b)

In his first IAB interview, § 87(2)(b) did not specify that PO Gembecki took him to the ground. He explained that PO Gembecki searched him after he exited the vehicle and found a single Percocet pill, and that PO Gembecki then told him to turn around and put his hands behind his back. § 87(2)(b) recounted, “He started pushing me and stuff, and I was moving a little bit. I’m not gonna lie—I moved a little bit. But I didn’t swing. I didn’t punch nobody. And he started punching me and choking me, stuff like that.”

In his second IAB interview, § 87(2)(b) specifically alleged that PO Gembecki pushed him to the ground after searching him. He recounted that PO Gembecki instructed him to put his hands behind his back, and that he complied. PO Gembecki then put his forearm or elbow against the back of § 87(2)(b) neck and pushed him against his vehicle. When asked if he physically struggled against PO Gembecki, § 87(2)(b) replied, “Well, I’m not gonna lie to you—I was moving. I was moving a little bit cause he was putting pressure on my neck and everything.” § 87(2)(b) admitted that he shook his body and shoulders back and forth, and when asked if he pulled his hands away from PO Gembecki, § 87(2)(b) again said that he was “moving.” PO Gembecki then pushed § 87(2)(b) to the ground.

In his phone statement, § 87(2)(b) recounted that PO Gembecki instructed him to spread his legs and grabbed his genitals through his pants while searching him from behind. § 87(2)(b) became “uncomfortable” and “nervous,” and he asked PO Gembecki what was going on. PO Gembecki responded with profanity before grabbing § 87(2)(b) arm and jacket and placing his foot in front of § 87(2)(b) feet, which caused him to fall to the ground.

In his in-person statement, § 87(2)(b) again recounted that he felt uncomfortable and “moved a little bit” when PO Gembecki frisked his groin area, and admitted that he took a “half step” to the right toward the rear of his vehicle. He denied, however, that he ever pushed away from the vehicle, pushed PO Gembecki, or tried to turn around. PO Gembecki then grabbed § 87(2)(b)

§ 87(2)(b) jacket near his shoulder and pulled him to the ground. PO Gembecki fell to the ground with § 87(2)(b).

§ 87(2)(b) alleged in his first IAB interview that PO Gembecki punched him approximately five times in his eye once they were on the ground. He spontaneously recounted to the IAB interviewers that PO Gembecki had claimed that § 87(2)(b) had bitten him, and he said, “To be honest, I don’t even know how that happened.” The interviewers asked him if he did bite PO Gembecki, and he replied, “To be honest, I don’t think—I don’t remember. Cause I was unconscious. He hit me so hard that I don’t even know where I was. You know, I was dizzy.” That same day, § 87(2)(b) viewed photo arrays and identified PO Gembecki as the officer who punched him “like ten times.” § 87(2)(b) also viewed an array containing PO Gomez, and denied that PO Gomez ever punched him.

During his second IAB interview, § 87(2)(b) admitted that he struggled with officers on the ground and tried to prevent them from pulling his hands behind his back. He explained that he physically resisted because PO Gembecki was hitting him. He alleged that PO Gembecki punched him in the left eye approximately 3-4 times. § 87(2)(b) made confusing statements regarding whether he bit PO Gembecki. When asked if he did so, he first said, “No, I don’t remember biting him.” He then insisted that he was certain that he did not bite PO Gembecki, but also repeated that he did not “remember” doing it. § 87(2)(b) explained his inability to recall by saying that he was “unconscious” from being struck by PO Gembecki, and recounted that he “wasn’t knowing what was happen [*sic*].”

In his phone statement, § 87(2)(b) recounted that PO Gomez and PO Landesberg began pulling on his arms once he was on the ground, but he claimed not to know what they were trying to do or if they were trying to pull his arms behind his back. He alleged that PO Gembecki struck him about six times in the left eye. § 87(2)(b) spontaneously recounted that an officer had alleged that § 87(2)(b) bit his arm, and said that he did not recall biting anyone and did not know how he could have done so. When asked to definitively state whether he actually bit an officer, § 87(2)(b) again maintained only that he did not recall biting anyone.

In his in-person statement, § 87(2)(b) admitted that PO Gomez and PO Landesberg were trying to pull his arms behind his back on the ground. When asked if he tried to prevent the officers from doing so, § 87(2)(b) admitted that he jerked his body back and forth, but denied that he tried to pull his arms away from the officers. However, he later admitted that he pulled his right arm out of PO Landesberg’s grip and reached out to press a button on PO Gembecki’s radio, which was still attached to his waistband. § 87(2)(b) claimed that he did so in an attempt to call for help. He alleged that PO Gembecki punched him in the left eye approximately 5-6 times. § 87(2)(b) did not mention the allegation regarding him biting PO Gembecki during this interview, and when asked about it he now firmly denied that he bit PO Gembecki. He surmised that PO Gembecki was making the false allegation because he realized that he “did something wrong” by using excessive force.

§ 87(2)(b) claimed that multiple officers searched § 87(2)(b) that they handcuffed § 87(2)(b) while he was still standing beside his vehicle, that § 87(2)(b) stood and argued with the officers while handcuffed for approximately five minutes, and that multiple officers punched and kicked § 87(2)(b) while he was still standing upright. He recounted that multiple officers eventually pushed § 87(2)(b) to the ground. He denied that § 87(2)(b) moved around at all once he was on the ground, and denied both that § 87(2)(b) bit any officer or that any officer claimed that § 87(2)(b) had bitten him.

§ 87(2)(b) suffered a small laceration and marked swelling about his left eye and the left side of his head, and he had a hematoma behind his left eyeball which resolved over time (see Privileged Records). His facial injuries can be seen in his arrest photograph, in another photograph taken of him at the stationhouse, and in a photograph of him at the hospital (BR17; BR15; BR18).

PO Gembecki denied that he deliberately took § 87(2)(b) to the ground. As previously described, PO Gembecki felt an object in § 87(2)(b) pants while frisking him. Almost immediately after PO Gembecki felt the object, § 87(2)(b) pulled forward, placed his hands on the vehicle, and then pushed backwards into PO Gembecki. PO Gembecki held onto § 87(2)(b) at this point, and both men fell to the ground. PO Gembecki landed on his right shoulder and aggravated a prior injury there. PO Gembecki wrestled with § 87(2)(b) on the ground and attempted to get his hands behind his back. § 87(2)(b) pushed PO Gembecki's arms away, and at one point he hit PO Gembecki's chest. PO Gembecki was certain that § 87(2)(b) struck him with a closed fist at some point during the struggle, but he could not recall with greater specificity.

PO Gembecki and § 87(2)(b) rolled around such that both men had their backs, stomachs, and sides against the ground at different points during the struggle. At one point, PO Gembecki removed his radio from his hip and tried to call for backup, but § 87(2)(b) took the radio from his hand and put it on the ground beneath his vehicle. § 87(2)(b) yelled throughout the struggle.

Eventually § 87(2)(b) bit PO Gembecki on the top of his left bicep, near the crook of his elbow. The bite was extremely painful and PO Gembecki screamed at § 87(2)(b) to release him. § 87(2)(b) bit PO Gembecki for more than ten seconds. PO Gembecki punched § 87(2)(b) in the face in an attempt to get him to release the bite. § 87(2)(b) did not immediately release the bite after being punched. PO Gembecki could not recall if he punched § 87(2)(b) multiple times. PO Gembecki did not think he punched § 87(2)(b) again after § 87(2)(b) released the bite.

PO Landesberg watched PO Gembecki frisk § 87(2)(b) and recounted hearing PO Gembecki say something to the effect of, "He has something." At that moment, § 87(2)(b) pushed off of the vehicle and into PO Gembecki. PO Gembecki attempted to cuff § 87(2)(b) by holding onto his arms, and the two became locked in a "stalemate" as PO Gembecki instructed him to stop resisting and to put his hands behind his back. PO Gomez then approached the struggle, and at some point PO Gomez, PO Gembecki, and § 87(2)(b) all went down to the ground. PO Landesberg believed the three men went to the ground simultaneously. PO Landesberg could not tell if the officers deliberately brought § 87(2)(b) to the ground, and he thought they may have simply tripped over one another.

PO Landesberg recounted staying on the passenger side of the vehicle with § 87(2)(b) while his partners struggled on the ground with § 87(2)(b). He kept asking his partners if they had cuffed § 87(2)(b) and they kept saying that they had not. Eventually PO Gembecki yelled, "He's biting me!" PO Landesberg soon joined the struggle. He did not actually see § 87(2)(b) biting PO Gembecki, but later saw that PO Gembecki's arm was bleeding. PO Landesberg did not see any officer punch § 87(2)(b).

PO Gomez was not aware of the physical struggle between PO Gembecki and § 87(2)(b) until the two men were already on the ground, so he could not say how they came to fall to the ground. He did not recount that he fell to the ground with the two men, as PO Landesberg had testified, but he did get on the ground soon thereafter to struggle with § 87(2)(b). PO Gomez recounted that § 87(2)(b) was already biting PO Gembecki when he first saw them struggling on the ground. PO Gembecki was screaming in pain and telling § 87(2)(b) to let go.

PO Gomez also instructed § 87(2)(b) to stop biting PO Gembecki, but § 87(2)(b) continued to do so. PO Gomez then punched § 87(2)(b) once in the side of his head. PO Gomez did not punch § 87(2)(b) again, and § 87(2)(b) eventually released the bite. PO Gomez could not recall if PO Gembecki also punched § 87(2)(b). PO Gomez claimed that § 87(2)(b) was biting PO Gembecki for five minutes, though he also noted his perception of time during the struggle was distorted. § 87(2)(b) continued to resist officers' attempts to handcuff him after he stopped biting PO Gembecki. He held his arms beneath his body, and when PO Gomez attempted to grab his arms, § 87(2)(b) elbowed PO Gomez in the chest.

§ 87(2)(g)

§ 87(2)(b) In the Line-Of-Duty injury report, PO Gembecki noted that he sustained pain to his right shoulder "from take down of defendant to ground" (BR14). In his handwritten TRI report, PO Gembecki only checked the box indicating he used a "hand strike" and did not check the box for "forcible take down" (BR15). However, on the computerized TRI report, the "forcible take down" box contains a "yes" to indicate that PO Gembecki did use such force (BR15).

A photograph of PO Gembecki's arm taken shortly after the incident shows the mark left by § 87(2)(b) bite (BR15). PO Gembecki's arm still bore a scar at the time of his CCRB interview, more than three months after the incident. PO Gembecki went to the hospital after the incident to have his shoulder X-rayed, and he had to take a prophylactic "exposure" drug cocktail because § 87(2)(b) bit him. PO Gembecki completed LOD paperwork but did not go on sick leave as a result of his injuries.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) Although PO Gembecki and PO Gomez admitted to punching § 87(2)(b) in the head and face, the number of times they punched him is not certain.

Patrol Guide Procedure 221-01 states that officers may use force when it is reasonable to place an individual in custody. The level of force used must be reasonable under the circumstances and not excessive (BR16).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

- **Allegation (G) Force: An officer struck § 87(2)(b) with a radio.**

Allegation (H) Force: Officers used physical force against § 87(2)(b)

In his first IAB interview, § 87(2)(b) did not make any additional allegations of force beyond his allegation that PO Gembecki punched him in the eye. He mentioned that his whole body hurt, that he had back pain, and that he had scrapes on his left knee. In his second IAB interview, he again only alleged that PO Gembecki had punched him.

In his phone statement, § 87(2)(b) specifically confirmed that PO Gembecki was the only officer who struck him. However, at a later point in the statement, § 87(2)(b) suddenly alleged that he suffered injuries to his body because officers hit him “a lot.” When pressed for details, § 87(2)(b) alleged that, while he was facedown on the ground, an unknown number of officers struck him “a lot of times” on many areas of his back.

In his CCRB interview, § 87(2)(b) again did not initially allege that officers struck him anywhere other than his face. However, when specifically asked if officers ever struck his body, § 87(2)(b) alleged that officers punched and kicked him “a lot” on the back and chest. He did not know how many times he was struck. He gestured to his left chest and lower and middle back to indicate where he was struck. He thought PO Gomez and PO Landesberg were the officers who struck him on the body. When asked to explain how the officers struck him in the chest, § 87(2)(b) said that they pulled him onto his side as they struggled with him.

During his CCRB interview, § 87(2)(b) said that he sustained pain his shoulders and head, and scrapes to his knees, right forearm, and left knuckles as a result of the incident, in addition to the injury to his left eye and face. He also said he was still suffering from back pain and “darker” urine.

At no point during his IAB interviews or his CCRB phone statement did § 87(2)(b) allege that he was struck with a radio. During his CCRB interview, § 87(2)(b) again recounted the incident without making any such allegation. However, during later questioning § 87(2)(b) claimed that something hard and metallic struck his head “about” two times during the struggle on the ground. § 87(2)(b) believed the object was a radio. When discussing the allegation, § 87(2)(b) gestured to the left and right sides of his head, but he eventually said that he felt the strikes on the top of his head near the rear. He did not know which officer struck him with the radio. § 87(2)(b) did not claim to have suffered any injury from being struck with the radio.

§ 87(2)(b) who claimed that there were four officers present from the beginning of the incident, recounted seeing four officers punch and kick § 87(2)(b) “a lot” once he was on the ground. He did not recount seeing an officer strike § 87(2)(b) with a radio or any other object. As previously explained, § 87(2)(b)'s account of the incident was not credible.

§ 87(2)(b) medical records contain no indications that he ever mentioned being struck with an object, that he ever complained of any injury to his head other than the injury to his left eye, or that he suffered any such injury. In addition to the injury to his eye, § 87(2)(b) did complain of pain in his left shoulder and “generalized body pains.” He also said he had a history of chronic lower back pain. He did not specifically complain of being struck in the back, and made no specific mention of injury to his chest. Physical exams and X-rays found no visible indications of manifest injury to his back. He had elevated levels of an enzyme possibly associated with kidney failure, so CAT scans were performed. They found mild perinephric stranding and fluid adjacent to the lower pole of his right kidney. These results were deemed “nonspecific,” and could possibly have been “infectious, inflammatory, or potentially posttraumatic.” Although hospital staff wanted to continue to monitor § 87(2)(b) enzyme level, he insisted on being discharged.

The officers all denied that either of these allegations took place.

§ 87(2)(g)

- **Allegation (I) Force: Police Officer Brandon Gembecki used a chokehold against § 87(2)(b)**

Allegation (J) Force: Police Officer Brandon Gembecki restricted the breathing of

§ 87(2)(b)

In his first statement to IAB, § 87(2)(b) recounted that PO Gembecki instructed him to turn around and put his hands behind his back while he was still standing. After PO Gembecki began to push § 87(2)(b) and § 87(2)(b) moved “a little bit,” PO Gembecki started “punching” and “choking” him. § 87(2)(b) also said of PO Gembecki, “He was choking me and hitting me all over my place [*sic*].” However, later that same day he was shown photo arrays containing PO Gembecki, PO Landesberg, and PO Gomez. § 87(2)(b) identified PO Gembecki and said that he was the officer who punched him. He also identified PO Gomez and said he “holding” him during the incident. An IAB officer asked § 87(2)(b) if PO Gomez ever struck him, and § 87(2)(b) replied, “He was holding me, choking me, and the other guy was punching me.” § 87(2)(b) now specifically alleged that PO Gomez was the officer who choked him, and that he did so by putting an arm around his neck.

However, in his second statement to IAB, § 87(2)(b) did not allege that any officer choked him. Moreover, when shown new photo arrays on this occasion, § 87(2)(b) again identified PO Gembecki as the officer who punched him. He also identified PO Gomez, but now said only that PO Gomez was grabbing his hand during the incident.

In both statements to IAB, § 87(2)(b) attributed his supposed loss of consciousness to being struck in the face by PO Gembecki.

In his phone statement, § 87(2)(b) alleged that PO Gembecki choked him by grabbing his neck in a “headlock” and putting his arm around the front of his throat. PO Gembecki choked § 87(2)(b) after punching him in the face, and after officers allegedly struck § 87(2)(b) with a radio and repeatedly kicked and punched his chest. PO Gembecki held § 87(2)(b) in a chokehold and restricted his breathing for at least 15 seconds. § 87(2)(b) was “out of breathing [*sic*]” and lost consciousness. § 87(2)(b) claimed that he had absolutely no memory of anything that took place between this point and the moment he regained consciousness after already arriving at the 52nd Precinct stationhouse. He estimated that he was unconscious for approximately 3-4 minutes.

In his CCRB interview, § 87(2)(b) again alleged that PO Gembecki placed him in a chokehold, and he now added that PO Gomez and PO Landesberg held his arms and successfully handcuffed him while PO Gembecki choked him. He estimated that PO Gembecki choked him

for 15-20 seconds, during which time he gasped and tried to shake his head out of the chokehold. He recounted being “out of breath a little bit” and “gone for a little bit,” and confirmed that he meant that he lost consciousness. He again claimed to have no memory of a portion of the incident immediately following the chokehold, but now said that he regained consciousness after being lodged in a police vehicle on scene.

As will be explained in greater depth in the analysis of **Allegation K**, § 87(2)(b) later retracted his claim that he lost consciousness until being placed in a vehicle, and said that he was only unconscious for 3-5 seconds. § 87(2)(b) changed his testimony after the investigator pointed out that he made further force allegations which would have taken place during the time he claimed to have been unconscious.

§ 87(2)(b) medical records contain nothing to indicate that he ever told medical personnel that he had been choked, that he ever complained of any injuries as a result of being choked, or that he had any injuries consistent with his having been choked.

§ 87(2)(b) alleged that two officers choked § 87(2)(b) when they tried to bring him to a standing position, before later saying that PO Gembecki, PO Gomez, and PO Landesberg all choked him. He had difficulty describing the manner in which the officers choked § 87(2)(b) and tried to explain that the officers were trying to force § 87(2)(b) to get up when he was facedown on the ground. § 87(2)(b) only said that the officers were touching § 87(2)(b) neck after being directly prompted by the investigator. When asked to describe how the officers were touching § 87(2)(b) neck, § 87(2)(b) suddenly pivoted and claimed that either PO Gembecki or PO Gomez had a knee atop § 87(2)(b) head.

§ 87(2)(b) eventually said that one officer put his arm “to” § 87(2)(b) neck and choked him while trying to get him up, but he then said that the officer’s arm was actually underneath § 87(2)(b) armpit. The investigator finally asked § 87(2)(b) if he meant that the officer wrapped his arm around § 87(2)(b) neck, and § 87(2)(b) answered affirmatively and claimed that the officer tried to pull § 87(2)(b) up by his neck while he was handcuffed. § 87(2)(b) denied that § 87(2)(b) ever lost consciousness.

PO Gembecki denied that he ever choked § 87(2)(b) and PO Gomez and PO Landesberg both denied seeing PO Gembecki do so.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

- **Allegation (K) Force: An officer restricted the breathing of** § 87(2)(b)

§ 87(2)(b) did not allege in his statements to IAB or in his phone statement that an officer restricted his breathing by stepping on his neck. As previously discussed, in his IAB statements § 87(2)(b) claimed to have lost consciousness after PO Gembecki punched him. In his phone

statement, he that he had absolutely no memory of anything that took place after PO Gembecki choked him, and that he did regain consciousness until he was inside the 52nd Precinct stationhouse. He also estimated that he was unconscious for approximately 3-4 minutes.

In his CCRB interview, § 87(2)(b) again claimed to have no memory of a portion of the incident immediately following the chokehold, but now said that he regained consciousness after being lodged in a police vehicle on scene. During the interview, § 87(2)(b) did not allege that an officer choked him by placing a boot on his neck during his initial account of the incident. However, he later claimed that an officer did so while he was handcuffed and lying on his stomach on the ground. He was lying with his face turned to the right such that the left side of his face was against the ground. An officer stepped on the back of § 87(2)(b) neck for approximately 10-15 seconds, which affected § 87(2)(b) ability to breathe “a little bit.” § 87(2)(b) could not see the officer who allegedly stepped on his neck, and did not know if he was one of the three officers who stopped him or one of numerous additional officers who arrived on scene.

When § 87(2)(b) specified that an officer stepped on his neck shortly after he was handcuffed, the investigator pointed out that § 87(2)(b) had claimed earlier in the interview that he lost consciousness immediately after being handcuffed and did not regain consciousness until he was inside a vehicle. In the face of this contradiction, § 87(2)(b) retracted his earlier claim and now said that he only lost consciousness for 3-5 seconds. He asserted that he did remember “most of the things that happened” after he was handcuffed.

There is nothing in § 87(2)(b) medical records to indicate that he complained to medical personnel of an officer stepping on his neck or of his breathing being restricted. As previously stated, the records do not note any injuries to § 87(2)(b) neck.

§ 87(2)(b) never spontaneously recounted that he saw an officer step on § 87(2)(b) neck. After being directly questioned about the allegation, § 87(2)(b) claimed that it happened after officers punched § 87(2)(b) but before they choked him while lifting him to a standing position. § 87(2)(b) initially thought either PO Gembecki or PO Gomez stepped on § 87(2)(b) neck, but eventually concluded that PO Gembecki was definitely the subject officer. § 87(2)(b) recounted that PO Gembecki was stepped on § 87(2)(b) neck as if he was trying to stop him from moving, though he also denied that § 87(2)(b) was moving at the time.

§ 87(2)(b) first claimed that PO Gembecki put his foot on the front of § 87(2)(b) throat. However, he also said that § 87(2)(b) was facedown against the ground at the time. When asked to explain the apparent contradiction, § 87(2)(b) now claimed that PO Gembecki stepped on § 87(2)(b) face and throat at the same time that he choked him with his arm. The investigator expressed confusion, and § 87(2)(b) changed his account again. He now concluded that PO Gembecki did not step on § 87(2)(b) throat, and actually stepped on the back of his neck.

The officers all denied that they or any other officers ever stepped on § 87(2)(b) neck while he was on the ground.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is § 87(2)(b) first CCRB complaint (BR20).
- PO Brandon Gembecki has been a member of the NYPD for seven years and has had 11 previous CCRB allegations involving six cases with one substantiated allegation. He also has three pending allegations in a more recent case (see officer history):
 - In CCRB case #201509979, the Board substantiated an allegation of retaliatory summons and recommended formalized training. The NYPD imposed a penalty of formalized training.
- PO Juan Gomez has been a member of the NYPD for four years and has had 24 previous CCRB allegations involving 12 cases with no substantiated allegations (see officer history).
- PO Adam Landesberg has been a member of the NYPD for seven years and has had nine previous CCRB allegations involving five cases with no substantiated allegations (see officer history).

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- On November 27, 2017, the NYC Comptroller's office reported that no Notice of Claim had been filed regarding the incident (BR21).
- In the criminal court case resulting from this arrest, § 87(2)(b) is charged with § 87(2)(b) (BR22). The case is still open and is next due in court on § 87(2)(b).
- § 87(2)(b) (BR23).

Squad: 8

Investigator:	_____	<u>Daniel Giansante</u>	_____
	Signature	Print Title & Name	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print Title & Name	Date